

LAKE COUNTY BOARD of ADJUSTMENT
July 11, 2007
Meeting Minutes

MEMBERS PRESENT: Jack Meuli, James McKee, Sue Laverty, Clarence Brazil

STAFF PRESENT: Sue Shannon, Joel Nelson, Lita Fonda

James McKee called the meeting to order at 4:00 pm

Motion by Jack Meuli, and seconded by Sue Laverty, to approve the May 2007 meeting minutes as written. Vote unanimous to approve minutes.

Sue Shannon announced that the Grits, Inc. variance request was withdrawn from the agenda.

SEIFERT DENSITY VARIANCE

Sue Shannon presented the staff report. She handed out an additional public comment letter received after the staff report was produced.

Tami Carstens spoke on behalf of the applicants. She felt the staff report covered the situation.

James checked for public comment.

Frances Davidson: He wanted assurance that the Board can't take action that would supersede covenants.

James: He did not believe the Board was subject to the covenants.

Sue: legal staff has advised The County that we do not interpret or enforce covenants. We will acknowledge them. It is a private agreement between landowners. The landowner of the subject request is responsible for compliance issues regarding covenants.

James: Covenants are civil issues?

Sue S: Yes, that's private between landowners.

Frances: The request is to take land that's currently under covenants and blend it with land not under those covenants. He's concerned about that.

Sue S: Staff recognize there are covenants on the property.

Frances: The petitioner does recognize that those 10 acres are under covenants. So the Board doesn't have anything to do with covenants.

Paul Laisy: He's building adjacent to the 10 acres in question. He's not opposed to what Carl is trying to do, although he's a little confused about it. He's really concerned about the covenants.

He estimated that the covenants are worth at least \$30,000 to him. Should something happen on the 10 acres in question that's different from the covenants, and change his environment for his property, then the covenants are probably worth way more than that. He thought the Board would be concerned about moving properties around that have covenants, if this might threaten those covenants.

Tami: The applicant recognized the 10 acres are subject to the covenants that were on the property prior. Covenants or restrictions on a piece of property stay on that piece of property, even if it gains property through boundary line adjustment or whatever. The 5 acres that the 2 residences are on, are not under covenants [inaudible]. The applicants are aware of the covenants, acknowledge them, and don't have any intention to try to change them.

James: It seems to him the situation and confusion already exist, since 1 lot was already blended. The parcel has 10 acres in a covenant and 5 acres aren't.

Public comment closed.

Jack said there's two houses on there now, so the density would not be increased. He thought it was a good proposal.

James asked if the applicant planned to replace the trailer. Sue S said there's nothing official in the application. His daughter did mention that they are proposing to construct a new home on the 11.25-acre tract, and she confirmed for James that this would entail removal of the trailer.

Sue L clarified with Sue S that the 10 acres is the western 10 acres of the 11.25-acre proposed parcel. Sue S explained that it's currently a 15-acre tract that has 2 homes on it. The applicants intend to go to the Planning Board and the Board of Commissioners to create a tract on the portion of the property that is not under covenants. James clarified that there is no 10-acre parcel. Sue L checked that the 10 acres under covenants are part of the 15-acre parcel. Sue S explained that the covenants have a legal description, and stay with that portion. Sue L asked if the applicants had considered that the neighbors would be more comfortable changing the whole parcel to be under covenants when it goes to subdivision review. Sue S noted that the applicants have plans for the 11 acres that are outside of the Board of Adjustment review.

Motion by Jack Meuli, and seconded by Clarence Brazil, to approve the variance request as written. Motion carried unanimously.

PETERSEN VARIANCE

Joel Nelson presented the staff report.

Jack asked if the lots were on Rocky Point Road. Joel said no. James showed the locations.

Shawn Rowland spoke on behalf of the applicant. He described the design process and why they are here. He suggested paying particular attention to #6 in Joel's report. The Board may wish to make sure they explain their basis of approval, if they decide to approve, as it could be precedent setting. They aimed for a clustered development. He spoke at the map and talked about various

features of the proposal. The property is sloping towards the lake. The property has some nice natural features. They could do 2-acre lots, but they didn't feel they could do a nice cluster development and still retain view sheds for everyone and minimize road length. He disagreed with 7B in the staff report that talks about conditions on 100-foot setback. He didn't think they had a big problem with that, but it seemed like a better place to work on that condition would be at the planning board level of review. With lot 6, they didn't know what's going to happen at this time. The applicant originally wanted to put it into some sort of conservation easement. They can't say that it will never be developed. It would have to go through all the review criteria at that time of development.

James checked if the applicants had problems with other conditions proposed. Shawn thought they were standard. James asked specifically about the plat restriction for the rest of the 10 acres. Shawn said this was how they designed it. Sue S commented that the 2-acre minimum lot size would be exclusive of required parkland or roadway construction. She didn't think they should be included in the calculation. She thought there should be 10 acres dedicated outside of required parkland and the required roadway easement. Shawn thought this would be covered at the Planning Board. Sue S thought it should also be reflected in the BOA approval, if granted. The approval should ensure there would be 10 acres exclusive of required parkland and required road dedication. Required parkland is a calculation based on the percentage that's determined by the lot size. Jack asked what it would be. Sue S said it would be determined during subdivision review. Shawn checked that there are 5 acres in the lots, so how much would need to be set aside? Sue S said that the way that letter A) is written, the acreage associated with the parks, the lots and the roads would equal 10 acres. She said that with the Polson Development Code, it would typically be exclusive of required roadway and required parkland. Shawn said typically what's been done with the roads is an easement. They can bring it across there to be easement, and on a 2-acre lot, that's how it should be done. Done that way, it would not be exclusive of the roadway. They've had problems on 1-acre lots, where the roadway is also an easement, of things not fitting. He thought they had to make sure they had not only the 2 acres per lot, which is 10, but then also the parkland. Sue S said although the calculation isn't in front of the Board, they could word it such that there will be 10 acres, exclusive of parkland, that is somehow dedicated or deed restricted as far as the preliminary plat proposal. Shawn emphasized that 'part of' it would be this way. 5.1 acres of the 10 are developable. Sue S suggested that 4.99 additional acres will be somehow non-developable as a portion of the proposed subdivision. Shawn thought they were on the same page.

James asked on the 100' setbacks from the vegetated areas, if the Board needed to get into that or if it was better taken care of at subdivision review. Sue S said that was required as part of the subdivision. She suggested they could put specific to this division, because they are saying there are unique qualities on this land, that this could be added as a condition. It would be required regardless.

Clarence thought they should have the 100' setback, since one main reason to approve this would be to preserve the natural features of the land.

Further public comment: None. Public comment closed:

Motion by Clarence Brazil, and seconded by Jack Meuli, to approve the variance subject to the conditions given and with the additional modifications that Sue S mentioned. Motion to approve the variance carried, 3 in favor (Jack Meuli, Clarence Brazil, James McKee) and 1 opposed (Sue Laverty).

OTHER BUSINESS: None.

Motion by Sue Laverty and seconded by Jack Meuli, to adjourn. Meeting adjourned.